D.B. INCOME TAX APPEAL NO.49/2006
(M/s Malu Khan Mahendra Singh Yasin Khan & Party
Vs. Dy. Commissioner of Income Tax & Ors.)

Date of order : 15.11.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Suresh Ojha, for the appellant.
Mr. K.K. Bissa, for the respondents.

We have heard learned counsel for the parties.

The assessee was awarded a Samman Patra under the scheme for honouring the tax payers from the categories of business, profession and salaried people who are highest tax payers having income about the minimum level prescribed for a continuous period stated in the Scheme which was contained in the Budget Speech delivered by the Finance Minister on 1.6.1998. The Scheme inter alia carried incentives one of which was that the assessment of Samman Patra Card holders may not be subjected to scrutiny for a period of three years except under very special circumstances and that too after obtaining the prior approval of the Commissioner/Chief Commissioner.

In the present case, subsequent to the year of honouring the petitioner-assessee with the Samman Patra, his case was subjected to scrutiny and the

finding that the details of sales as well as certain expenses in the books of accounts of the assessee are not verifiable and the same were rejected and the best judgment assessment was made. Specific plea about the aforesaid incentive was not before the assessing officer, however, it was subsequently raised. However, the Tribunal also noticed that there is no ground for invoking sub-para (ii) of para (4) of the aforesaid Scheme on the ground that prior approval of the Commissioner/ Chief Commissioner was not obtained before subjecting his case for scrutiny.

Be that as it may. The assessing officer made certain addition by applying the GP rate on the sale figures disclosed by the assessee and disallowed the loss shown by the assessee in the accounts which was substantially reduced by the CIT (A). The CIT (A) maintained the marginal additions as well as it sustained the disallowance of loss to some extent.

On further appeal before the Tribunal by revenue as well as assessee, the Tribunal rejected the plea to take out the case from scrutiny finding that the exemption from scrutiny for a period of three years under the scheme was not absolute and there being no ground that prior approval of the Commissioner was not obtained, the holding of scrutiny was found to be proper. However, the finding that the proper enquires were not conducted, the matter was

remitted to the assessing officer for holding proper enquiries. In coming to this conclusion, it further directed the assessing officer to compute the total income afresh by applying GP rate as was disclosed by the assessee last year though the assessee has submitted that as for this year he has cogent good grounds to support fall in the GP rate as compared to preceding year.

It is in the aforesaid circumstances, this appeal has been preferred by the assessee. In view of the order which we propose to pass, we have not referred to the facts relating to account position and details. The question which was framed at the time of admission of the appeal reads as under :

> "Whether in the facts and circumstances, keeping in view the additions ultimately made in returned income of the assessee by giving best judgment assessment makes it a case in which by any stretch of satisfaction can be reached that the special circumstances existed which warranted deviation from the returned income of the assessee on the basis of best judgment assessment by ignoring the provisions made in the scheme for honouring the honest tax payers issued by the Central Board of Direct Taxes in exercise of its power under Section 119 of the Income Tax Act ?

It is true that in ordinary course the scrutiny of the tax payer who has been honoured under the aforesaid scheme would not have taken place for

three subsequent years but, at the same time, it is equally true that immunity from scrutiny for a period of three years was not in absolute terms of the scheme. There being no issue raised about the observation of the safeguard envisaged before subjecting an honoured tax payer's case to scrutiny within three years subsequent thereto viz. taking prior approval of the Commissioner/Chief Commissioner, keeping in view the peculiar facts and circumstances of the case, we do not consider it would be proper to set aside the order of Tribunal and Assessing Officer merely on the ground of subjecting petitioner's case to scrutiny within a period of three years, particularly keeping in view the nature of the trade and the defects in accounts, which is usually connected with the trade of liquor contractors, we do not consider it proper to interference with the order of Tribunal on that ground alone. Moreover, it cannot be said as a matter of law that on grant of a Samman Patra, an assessee gets immunity from being subjected to regular assessment in ordinary course.

Be that as it may. We are satisfied that in the face of the state in which the accounts have been maintained, it would not be just and proper to interfere with the resorting of the best judgment assessment in the case of the appellant.

However, we also find that when the matter

is to be considered by the assessing officer de novo, the question of GP rate cannot be subjected to straight jacket formula and it should be left to the assessing officer to consider the material before it, including explanation furnished by assessee about fall in G.P. rate in comparison to previous year or in relation to so called comparable case and reach his own conclusion. To that extent rigid direction to apply particular GP rate is set aside.

With the aforesaid directions, the appeal stands disposed of. No costs.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

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